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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,838	01/19/2005	Frank Haase	TS8578US	2392

7590
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EXAMINER

MCAVOY, ELLEN M

ART UNIT	PAPER NUMBER
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1797

MAIL DATE	DELIVERY MODE
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09/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/521,838	Applicant(s) HAASE, FRANK	
	Examiner Ellen M. McAvoy	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>19 Jan 2005</u> . | 6) <input type="checkbox"/> Other: ____. |

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jahier et al (EP 0 789 203 A1) in combination with Berlowitz et al (5,689,031) or Wittenbrink et al (6,296,757).

Jahier et al [“Jahier”] disclose a gas condensing boiler which meets the limitations of the condensing boiler of the claims as set forth in the specification on page 1. Applicant teaches in the specification that normally condensing boilers use natural gas as fuel which may not be available in all areas where no natural gas grid is present. Applicant’s claimed invention differs from Jahier by using a Fischer-Tropsch derived fuel as a substitute for natural gas. However, as evidenced by Berlowitz et al [“Berlowitz”] and Wittenbrink et al [“Wittenbrink”], such Fischer-Tropsch derived fuels are conventional in the art.

Berlowitz discloses a Fischer-Tropsch derived diesel fuel which boils in the range of 250° – 700°F, contains at least 95 wt.% paraffins, has an iso- to normal paraffin ratio of about 0.3 to 3.0, and a sulfur content and nitrogen content of less than 50 ppm, preferably nil. The Fischer-Tropsch process produces a distillate having virtually no aromatic compounds. See column 4, lines 6-67. Berlowitz teaches that typically petroleum derived distillates are not clean in that they contain significant amounts of sulfur, nitrogen and aromatics, and that Fischer-Tropsch derived distillates are “clean” in that they contain very low amounts of sulfur, nitrogen

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and aromatics. Wittenbrink discloses synthetic diesel fuels or blending stocks for diesel fuels and processes for the preparation from a Fischer-Tropsch wax. The synthetic fuels disclosed in Wittenbrink boil in the range of 250° – 700°F, contains at least 95 wt.% paraffins, has an iso- to normal paraffin ratio of about 0.3 to 3.0, and a sulfur content and nitrogen content of less than 50 ppm, and preferably nil. The Fischer-Tropsch process produces distillates containing virtually no aromatic compounds. See column 3, lines 47 to column 4. Wittenbrink also teaches that such “clean” distillates are, or likely will be, in great demand as diesel fuel or in blending diesel fuel. Thus having the prior art references before the inventor at the time the invention was made it would have been obvious to have used a conventional fuel such as the clean distillate fuel taught by either Berlowitz or Wittenbrink in the condensing boiler of Jahier. As recently instructed by the Supreme Court, when a claim defines a combination of elements known in the prior art, the combination must do more than yield a predictable result. *KSR Int’l. Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 1740 (2007).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ellen M. McAvoy whose telephone number is (571) 272-1451. The examiner can normally be reached on M-F (7:30-5:00) with alt. Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (571) 272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ellen M McAvoy/

Ellen M McAvoy
Primary Examiner
Art Unit 1797

EMcAvoy
August 29, 2008